

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:

JERRY NMN BANDA
AMBER L. BANDA

Debtors

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CASE NO. 06-10133

DECISION AND ORDER
CONCERNING DEBTOR'S COMPLIANCE WITH § 109(h)

At Fort Wayne, Indiana, on February 17, 2006.

As a result of the bankruptcy reforms of 2005, to be eligible for relief under Title 11 an individual must have received credit counseling from an approved agency during the 180 days prior to filing the petition. 11 U.S.C. § 109(h)(1). This requirement may be waived, however, if the debtor files “a certification,” which “is satisfactory to the court,” describing “exigent circumstances” necessitating the immediate filing of a bankruptcy petition without waiting for the completion of credit counseling, and which “states that the debtor requested credit counseling . . . but was unable to obtain [it]” within five days. 11 U.S.C. § 109(h)(3)(A)(i-iii). The certification must be filed with the petition, see, Interim Bankruptcy Rule 1007(b)(3), (c), and it must state the facts demonstrating both exigent circumstances and the debtor’s efforts to obtain credit counseling “with particularity.” Fed. R. Bankr. P. Rule 9013. If the certification is satisfactory to the court, the debtor is then required to obtain credit counseling within the 30 days following the petition. 11 U.S.C. § 109(h)(3)(B).

The debtor in this case has asked the court to waive the requirement of pre-petition credit counseling. The certification for that waiver, however, is incomplete and, therefore, not satisfactory

to the court.¹ Although the debtor seems to have made some effort to describe exigent circumstances necessitating the immediate filing of a bankruptcy petition, the certification fails to satisfactorily indicate that debtor unsuccessfully sought credit counseling prior to filing this case or any efforts the debtor made to obtain that counseling.

Debtor's certification for a waiver of the requirement of pre-petition credit counseling is not satisfactory to the court; therefore, based upon the present record, the debtor is not eligible for relief under Title 11. Debtor shall file an amended certification which must fully comply with all of the requirements of § 109(h)(3) within fourteen (14) days. The failure to do so will result in the dismissal of this case without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

¹The "certification" is in the form of a motion signed only by debtors' counsel. A motion signed by debtors' counsel and not the debtors themselves does not qualify as a certification as required by § 109(h) to waive the pre-petition credit counseling requirement. See, In re Pinto, ___ B.R. ___, 2006 WL 213721 *2-3 (Bankr. E.D. Pa. 2006); In re Rodriguez, ___ B.R. ___, 2005 WL 3676825 *4 (Bankr. D. Idaho 2005).